

Notice of Allowability

Application No.

09/995,587

Applicant(s)

VAN HIJUM ET AL.

Examiner

Art Unit

Rebecca E. Prouty

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to The amendment filed 10-28-03.
2. ☒ The allowed claim(s) is/are 15 and 19-25.
3. ☒ The drawings filed on 21 November 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

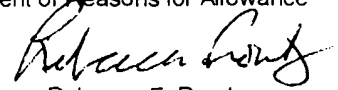
7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____ | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |


Rebecca E. Prouty
Primary Examiner
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An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on 11-19-03, Philip DuBois requested an extension of time for 1 MONTH(S) and authorized the Commissioner to charge Deposit Account No. 25-0120 the required fee of \$310 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

EXAMINER'S AMENDMENT

In Claim 15 line 8, insert --and-- after --SEQ ID No. 1,--.

In Claim 15 line 12, delete --and--.

In Claim 20, lines 2-3, replace --oligosaccharide or polysaccharide-- with --fructo-oligosaccharide or fructo-polysaccharide--.

In Claim 20, line 3, delete the second occurrence of --by--.

In Claim 20, line 5, insert --or-- following --carboxymethylation,--.

In Claim 25, lines 2-3, replace --oligosaccharide or polysaccharide-- with --fructo-oligosaccharide or fructo-polysaccharide--.

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In Claim 25, line 3, delete the second occurrence of --by--.

In Claim 25, line 5, insert --or-- following
--carboxymethylation,--.

Replace all of the first paragraph of the application on page 1, lines 5-8 with --This application is a continuation-in-part of application of U.S. Application Serial No. 09/604,958 filed on June 28, 2000, now US Patent 6,635,460, which claims priority from European Application No. 00201872.9 filed on May 25, 2000.--.

The following is an examiner's statement of reasons for allowance:

The prior art fails to teach or suggest an inulosucrase with the claimed properties recited in Claims 15 and 19-23 . While van Geel-Schutten et al. (1999) or van Geel-Schutten et al. (1998) disclose that *Lactobacillus reuteri* strain LB 121 encode a levansucrase, they fail to suggest that an inulosucrase is also produced. Furthermore, Claims 24 and 25 are non-obvious in view of van Geel-Schutten et al. (1999) or van Geel-Schutten et al. (1998) as these references do not teach a recombinant host cell transformed with a gene encoding a levansucrase having at least 85% identity to SEQ ID NO:11 (as is required for the claimed

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methods) and a specifically claimed gene is not *prima facie* obvious over a disclosure of a structurally dissimilar compound i.e., the protein encoding the gene (*In re Deuel*, USPQ2d 34:1210).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rebecca Prouty, Ph.D. whose telephone number is (703) 308-4000. The examiner can normally be reached on Monday-Friday from 8:30 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy, can be reached at (703) 308-3804. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



Rebecca Prouty
Primary Examiner
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